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Supreme Court of the United States

October Term 1943

No. 183

B. H. INNESS BROWN, DAVID PAINE, ETHELBERT WARFIELD, J. FEARON BROWN, GEORGE KOEGLER, and MURRAY MACELHINNY, individually and as co-partners under the firm name of Kellogg, Emery & Inness-Brown,

and

LAWRENCE S. GREENBAUM, EDWARD S. GREENBAUM, HERBERT A. WOLFF, MORRIS L. ERNST, JONAS J. SHAPIRO, WALLACE D. JENNINGS, SAMUEL J. SCHUR and ALEXANDER LINDEY, individually and as co-partners under the firm name of Greenbaum, Wolff & Ernst,

Petitioners,

against

JOHN GERDES and JAMES D. CARPENTER, JR., Trustees of Reynolds Investing Co., Inc., Debtor,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE AND COUNTY OF NEW YORK

DAVID PAINE,
LAWRENCE GREENBAUM,
Counsel for Petitioners.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE AND COUNTY OF NEW YORK *

To the Supreme Court of the United States:

The petitioners pray for a writ of certiorari to review a decision of the Court of Appeals of New York (290 N. Y. 468) which, in reversing, by a vote of four to three, the decision of the New York Supreme Court and the Appellate Division, determined that the New York Supreme Court was precluded from determining and enforcing the attor-

* The index and table of cases and statutes cited appear at the end hereof.

neys' lien of petitioners, as provided by Section 475 of the New York Judiciary Law (Consol. Laws, c. 30), because exclusive jurisdiction to fix petitioners' fees for services in plenary suits in the State Court in behalf of the debtor and Trustees, resided in the United States District Court, New Jersey, by virtue of the United States Constitution (Art. 1, § 8, Cl. IV) and the Bankruptcy Act (Chapter X).

Summary Statement of Matter Involved

Proceedings for the reorganization of Reynolds Investing Company, Inc. (referred to as Investing), under Section 77B of the Bankruptcy Act, were instituted on May 18, 1938 in the United States District Court of New Jersey (R. 11). On August 1, 1938, the Bankruptcy Court (Judge Fake) by specific order authorized Investing to commence an action in the Supreme Court of New York (referred to as the State Court) on certain claims in favor of Investing against its former officers, directors, and others, and to retain petitioners' law firms (referred to as the Attorneys) to prosecute the action (R. 12). On August 4, 1938, prior to the effective date of Chapter X of the Bankruptcy Act (Chandler Act), such an action was commenced in the State Court (R. 12).

On January 19, 1939, after the effective date of Chapter X, the Bankruptcy Court entered an order appointing respondents trustees of Investing (referred to as Trustees) and authorizing them to be substituted as parties plaintiff in and to continue the action which had been commenced pursuant to its order of August 1, 1938 (R. 12). The Trustees, upon their application, were duly substituted as parties plaintiff in the action by order of the State Court dated February 10, 1939 (R. 12).

Two other actions were commenced in 1940 by the Trustees in the State Court, with the petitioners as their Attorneys, pursuant to the authority of the Bankruptcy Court (R. 13, 16, 19).

The Attorneys brought the first action to trial and succeeded in obtaining an interlocutory judgment, holding the principal defendants liable to the Company and directing that they account to the Trustees in hearings before a Referee. The Attorneys conducted such hearings and final judgments were entered against various defendants, ranging in amount up to $1,310,109.13 (R. 13-15). No fee was ever paid them for services.

In June, 1941, while the petitioners were conducting the hearings before the Referee, and while the two other actions were pending undetermined (issue having been joined), the Trustees (who are members of the Bar) notified the Attorneys by letter that they were taking over all pending matters in the Attorneys' hands "except the conduct of the hearings before Referee Dunn"; that they were relieving the Attorneys "henceforth of the burden and responsibility of the litigation"; and that they themselves were going to handle pending appeals and the collection of the judgments in the first action (R. 20, 22). This notification was not based on any claim of neglect or wrongdoing on the part of the Attorneys, but solely on the absolute prerogative of a client to change his attorneys (R. 20).

Thereafter, upon refusal of the Attorneys to accede to the demand of the Trustees that they surrender papers and memoranda relating to the litigation unless their fees and disbursements were paid, the Trustees began a proceeding in the Bankruptcy Court to procure the same. The motion was resisted by the Attorneys. After argument in the Bankruptcy Court, the Trustees withdrew their motion pursuant to a stipulation, dated July 19, 1941, and signed "So Ordered" by the Judge of the Bankruptcy Court, which provided, among other things, that the Attorneys should institute proceedings in the State Court to fix their liens, with the reservation of rights to the Trustees to question the jurisdiction of that Court. It was stipulated and ordered that the Attorneys would "consent to the substitution of the Trustees or their attorneys" in place and stead of the Attorneys in all pending actions (R. 25).

Lien Proceedings in State Court

In accordance with the stipulation and order of the Bankruptcy Court, the Attorneys, in December, 1941, instituted a proceeding in the State Court to fix and enforce their liens in the three actions, pursuant to Section 475 (infra, pp. 5-6) of the Judiciary Law (R. 9-26). The Trustees interposed an answer contesting the jurisdiction of the New York Court to fix the liens, contending that exclusive jurisdiction over the State Court causes of action and the Attorneys' fees was vested in the Bankruptcy Court under the Constitution of the United States and the Bankruptcy Act; further, that the Attorneys had inferentially agreed with the Bankruptcy Court that their compensation and liens should be fixed by that Court (R. 26-67).

The State Court Justice entered an order overruling the Trustees' objections (R. 4-5) and wrote a comprehensive opinion on the entire subject (R. 98-109).

After the disposition of the jurisdictional issue, the State Court Justice conducted hearings upon the merits and entered a final order determining the reasonable value of the Attorneys' services (R. 6-8) in the three suits to be $102,750. This was based on over 9,000 hours of services, an extended trial, resulting in judgments for the Trustees of $1,310,000, and the use of plaintiffs' testimony by the Trustees in a similar action in Virginia (R. 15-6, 19, 111-3).

Proceedings in the Appellate Division

The Trustees appealed both the order overruling their jurisdictional objections and the order fixing the Attorneys' lien to the Appellate Division, First Department. That Court (all five Justices concurring) affirmed both orders without opinion, 264 App. Div. 852 (R. 118-9).

Proceedings in the Court of Appeals

By appeal as of right, upon the ground that the construction of the Constitution of the United States was directly involved (R. 116-7), and by permission granted, the Trustees appealed to the Court of Appeals (R. 121-2).

The Court of Appeals, by divided vote, reversed both orders and dismissed the proceedings (290 N. Y. 468), (R. 129-30), expressly noting in its statement of the nature of the appeal that it was an appeal on constitutional grounds (R. 124). Chief Judge Lehman and Judges Loughran and Conway dissented on the authority of *Sherman* v. *Buckley*, 119 F. (2d) 280, cert. den. 314 U. S. 657 (R. 129).

The Jurisdiction of This Court to Grant Certiorari

The jurisdiction of this Court is invoked under Judicial Code, Section 237(b), 28 USC Section 344(b).

The Court of Appeals, the highest Court of the State of New York, has dismissed the proceeding upon its construction of the Constitution of the United States and the Bankruptcy Act. According to such interpretation, exclusive jurisdiction is conferred upon the Bankruptcy Court which precludes the State Court from determining and enforcing the liens of the Attorneys under the New York Lien Law and confers an immunity to the debtor and its Trustees from the operation of such Lien Law. The New York statute thus involved, Section 475 Judiciary Law, Consol. Laws, c. 30, reads as follows:

> "§ 475. *Attorney's lien in action, special or other proceeding*
>
> "From the commencement of an action, special or other proceeding in any court or before any state or federal department, except a department of labor, or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his

client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien. As amended L. 1936, c. 876; L. 1938, c. 34; eff. Sept. 1, 1938."

The Federal and constitutional questions and the claim of immunity were raised in the answer of the Trustees (R. 26-31) and passed upon by the Court of Appeals (R. 124-9).

This application is made within the three months allowed by 28 U. S. C. 350. The order of the Court of Appeals was made on April 22, 1943 (R. 129), reargument was denied on May 27, 1943 (R. 130); and on June 4, 1943, the order and determination of the Court of Appeals were made the order and determination of the Supreme Court, New York County (R. 131-2).

Constitution and Statutes Involved

The section of the Constitution of the United States and the Federal statutes involved will be found in the Appendix.

Questions Presented

1. Where a Debtor in Reorganization proceedings, pursuant to Chapter VIII (Sec. 77B) of the Bankruptcy Act retains attorneys and commences a plenary suit in a State Court, under specific order of the Reorganization Court, to enforce claims against third persons, and the Trustees of the Debtor, appointed under Chapter X of the Bankruptcy Act, are thereafter substituted as parties plaintiff in such action and prosecute it by the same attorneys, also under the specific order of the Reorganization Court, do

Article 1, Section 8, Clause IV of the Constitution of the United States, and the corporate reorganization provisions of the Bankruptcy Act preclude the State Court from determining and enforcing, under Section 475 of the Judiciary Law of New York State, the lien of such attorneys upon such cause of action, or the proceeds thereof, for their unpaid compensation for services in the action?

2. Where a Debtor in reorganization proceedings pursuant to Chapter VIII (Sec. 77B) of the Bankruptcy Act, and its Trustees, appointed later under Chapter X, retain attorneys and prosecute a plenary suit in a State Court under specific order of the Reorganization Court, to enforce claims against third persons, and the Trustees thereafter discharge the attorneys without cause before they have completed their services, and seek to substitute themselves pro se, or others as attorneys, does the State Court have jurisdiction to fix the lien of the discharged attorneys upon the causes of action in the State Court, and the proceeds thereof, as a condition of granting the substitution; or does the Constitution of the United States (Art. 1, Sec. 8, Cl. IV) and the Bankruptcy Act (Chaps. VIII and X) invest the Bankruptcy Court with exclusive jurisdiction to fix the attorneys' fees and preclude the State Court from proceeding under Section 475 of the Judiciary Law?

3. Where Trustees of a Debtor in Federal reorganization proceedings, under specific order of the Reorganization Court, commence or intervene in, and prosecute, plenary actions in a State Court upon choses in action in favor of the Debtor, do they thereby submit themselves to the jurisdiction of the State Court as to all incidents of the plenary action, including the determination of attorneys' liens thereon under Section 475 of the New York Judiciary Law?

4. Does a Reorganization Court, under Chapter VIII of the Bankruptcy Act (Sec. 77B), have jurisdiction as against

a State Court, of a cause of action in favor of the Debtor, which must be and is prosecuted by plenary suit in such State Court, together with the incidents of such suit, including the determination of the attorneys' lien?

5. Did the Reorganization Court, by virtue of the subsequent enactment of Chapter X, ever obtain jurisdiction over the causes of action which, with its consent, were commenced in the State Court when the Reorganization Court was proceeding under Chapter VIII (Sec. 77B)?

The Reasons for the Allowance of the Writ

1. In holding that the Bankruptcy Court had exclusive jurisdiction under the Constitution and the Bankruptcy Act, which precluded the Supreme Court, New York, from fixing the liens of the attorneys pursuant to Section 475, New York Judiciary Law, upon causes of action prosecuted in the latter Court on behalf of the Debtor and the Trustees under specific order of the Bankruptcy Court, the Court of Appeals has decided an important Federal question of substance not heretofore determined by this Court and in conflict with the decisions of the Circuit Court of Appeals for the Second (*Sherman* v. *Buckley*, 119 F. [2d] 280, cert. den. 314 U. S. 657) and Eighth Circuits (*Ohio Oil Company* v. *Thompson*, 120 F. [2d] 831, cert. den. 314 U. S. 658).

2. The Court of Appeals, in determining that the Federal Court did not surrender its jurisdiction to fix petitioners' fees, has determined a Federal question of substance in a way probably in conflict with the decisions of this Court. *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478; *Texas* v. *Donoghue*, 302 U. S. 284; *Foust* v. *Munson S.S. Lines*, 299 U. S. 77.

3. The Court of Appeals, in holding that the Bankruptcy Court had jurisdiction of the causes of action prosecuted

in the New York Supreme Court, has determined an important Federal question of substance in conflict with the decisions of the Circuit Court of Appeals and probably in conflict with the decisions of this Court. *In re Standard Gas & Elec.*, 119 F. (2d) 658, 663; *Tilton v. Model Taxi Corp.*, 112 F. (2d) 86, 88; *In re Prima*, 98 F. (2d) 952, 957, cert. den. *sub nom. Keig v. Harris Trust & Savings Bank*, 305 U. S. 658; *Taubel-Scott-Kitzmiller Co. v. Fox*, 264 U. S. 426; *Schumacher v. Beeler*, 293 U. S. 367.

Respondents and the Securities and Exchange Commission, which appeared as *amicus curiae* in the Court of Appeals, expressly stated that the appeal involved the construction of the reorganization provisions of the Bankruptcy Act and the respective jurisdictions of the Bankruptcy and State Courts and presented serious, novel and important questions in the administration of estates in reorganization under the National Bankruptcy Act which should be resolved by this Court.

WHEREFORE, your petitioners respectfully pray that this Petition for a Writ of Certiorari to the Supreme Court of the State of New York, New York County, be granted.

B. H. INNESS BROWN et al.,
Petitioners.

By DAVID PAINE,
LAWRENCE GREENBAUM,
Their Counsel.

Dated, July 19, 1943.

APPENDIX

CONSTITUTION AND FEDERAL STATUTES

Federal Constitution

ARTICLE I, SECTION 8, CLAUSE 4.

The Congress shall have Power To establish • • • and uniform laws on the subject of Bankruptcies throughout the United States;

Federal Statutes

JUDICIAL CODE, SECTION 256

(28 U. S. C. 371).

EXCLUSIVE JURISDICTION OF UNITED STATES COURTS.

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: • • •

Sixth. Of all matters and proceedings in bankruptcy.

Federal Bankruptcy Act

SEC. 23. JURISDICTION; UNITED STATES AND STATE COURTS.

a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

b. Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the

bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67 and 70 of this Act.

SEC. 62. EXPENSES OF ADMINISTERING ESTATES; UNAUTHORIZED SHARING OF FEES; WITHHOLDING ALLOWANCES.—a. The actual and necessary costs and expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

c. A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, rendering services in a proceeding under this Act or in connection with such proceeding, shall not in any form or guise share or agree to share his compensation for such services with any person not contributing thereto, or share or agree to share in the compensation of any person rendering services in a proceeding under this Act, or in connection with such proceeding, to which services he has not contributed: *Provided, however,* That an attorney-at-law may share such compensation with a law partner or with a forwarding attorney-at-law, and may share in the compensation of a law partner.

d. A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, seeking compensation for services rendered by him in a proceeding under this Act or in connection with such proceeding, shall file with the court his petition setting forth the value and extent of the services rendered, the amount requested and what allowances, if any, have theretofore been made to him. Such petition shall be accompanied by his affidavit stating whether an agreement or understanding exists between the petitioner and any other person for a division of compensation and, if so, the nature and particulars thereof. If

satisfied that the petitioner has, in any form or guise, shared or agreed to share his compensation or in the compensation of any other person contrary to the provisions of this subdivision, the court shall withhold all compensation from such petitioner.

SEC. 67. LIENS AND FRAUDULENT TRANSFERS.— * * *

b. The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under chapters X, XI, XII, or XIII of this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

SEC. 111. EXCLUSIVE JURISDICTION OVER DEBTOR AND PROPERTY.

Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located.

SEC. 114. MATTERS UPON APPROVAL OF PETITION; JURISDICTION, POWERS, AND DUTIES.

Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not in-

consistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication.

SEC. 116. SAME; ADDITIONAL JURISDICTION OVER ADMINISTRATION OF ESTATE.

Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court—* * *

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable.

SEC. 148. ORDER OF APPROVAL AS STAY OF OTHER PROCEEDINGS.

Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property.

SEC. 206. PERSONS ENTITLED TO HEARINGS.

The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. * * *

SEC. 216. PROVISIONS OF PLAN.

A plan of reorganization under this chapter—* * *

(2) may deal with all or any part of the property of the debtor;

(3) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

(10) shall provide adequate means for the execution of the plan, which may include: the retention by the debtor of all or any part of its property; the sale or transfer of all or any part of its property to one or more other corporations theretofore organized or thereafter to be organized; the merger or consolidation of the debtor with one or more other corporations; the sale of all or any part of its property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens, the cancellation or modification of indentures or of other similar instruments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the amendment of the charter of the debtor; the issuance of securities of the debtor or such other corporations for cash, for property, in exchange for existing securities, in satisfaction of claims or stock or for other appropriate purposes;

(13) may include provisions for the settlement or adjustment of claims belonging to the debtor or to the estate; and shall provide, as to such claims not settled or adjusted in the plan, for their retention and enforcement by the trustee or, if the debtor has been continued in possession, by an examiner appointed for that purpose;

SEC. 221. CONFIRMATION BY COURT.

The judge shall confirm a plan if satisfied that—

(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding

or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge;

SEC. 227. EXECUTION OF INSTRUMENTS, SATISFACTION OF LIENS, ETC.

The court may direct the debtor, its trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of property dealt with by a plan which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the plan.

SEC. 241. PETITIONING CREDITORS; COURT OFFICERS; ATTORNEYS THEREFOR.

The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceedings under this chapter—

(3) by the trustee and other officers, and the attorneys for any of them;

(4) by the attorney for the debtor;

SEC. 242. REPRESENTATIVES AND OTHER PARTIES IN INTEREST; ATTORNEYS THEREFOR.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or not accepted by creditors and stockholders or finally confirmed by the judge—

(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders;

(2) by any other parties in interest except the Securities and Exchange Commission; and

(3) by the attorneys or agents for any of the foregoing except the Securities and Exchange Commission.

SEC. 243. CREDITORS AND STOCKHOLDERS; ATTORNEYS THEREFOR.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto.

SEC. 244. PETITION FILED IN PENDING BANKRUPTCY PROCEEDING.

Where a petition is filed under section 127 of this Act, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in the pending bankruptcy proceeding—

(1) by a marshal, receiver, or trustee, as provided in subdivision g of section 48 of this Act, and the attorneys for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this Act to compensation or reimbursement in such bankruptcy proceeding.

SEC. 245. SAME; REFEREE IN BANKRUPTCY.

Where a petition is filed in a pending bankruptcy proceeding, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 40 of this Act.

SEC. 246. DISMISSAL OF PROCEEDING OR ADJUDICATION OF BANKRUPTCY.

Upon the dismissal of a proceeding under this chapter, or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof, and for the payment of all proper costs and expenses incurred by officers in such proceedings.

SEC. 247. HEARING OF APPLICATIONS.

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate, * * *.

SEC. 248. DISMISSAL OF PROCEEDING AND REINSTATEMENT OF BANKRUPTCY; CHARGING OF ALLOWANCES IN BANKRUPTCY.

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, receiver, or trustee in the bankruptcy proceeding for services rendered by them in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this Act fixing their compensation in a bankruptcy proceeding.

SEC. 249. STATEMENT OF CLAIMS OR STOCK ACQUIRED OR TRANSFERRED AFTER COMMENCEMENT OF PROCEEDING.

Any person seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred.

SEC. 250. APPEALS.

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compen-

sation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

SEC. 257. TRUSTEE OR DEBTOR IN POSSESSION VESTED WITH RIGHTS OF PRIOR FIDUCIARY.

The trustee appointed under this chapter, upon his qualification, or if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage.

SEC. 258. PROTECTION OF OBLIGATIONS OF PRIOR FIDUCIARY; PAYMENT OF COSTS AND EXPENSES.

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable costs and expenses incurred therein as may be allowed by the judge.

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